

## Federal Reserve System

## § 219.2

(b) No contract shall be void or considered voidable by reason of section 29(b) of the Act (15 U.S.C. 78cc(b)) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or the rules and regulations thereunder based solely on the bank's status as a broker when the contract was created, if:

(1) At the time the contract was created, the bank acted in good faith and had reasonable policies and procedures in place to comply with section 3(a)(4)(B) of the Act (15 U.S.C. 78c(a)(4)(B)) and the rules and regulations thereunder; and

(2) At the time the contract was created, any violation of the registration requirements of section 15(a) of the Act by the bank did not result in any significant harm or financial loss or cost to the person seeking to void the contract.

### § 218.781 Exemption from the definition of "broker" for banks for a limited period of time.

A bank is exempt from the definition of the term "broker" under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) until the first day of its first fiscal year commencing after September 30, 2008.

## PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

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AUTHORITY: 12 U.S.C. 3415.

SOURCE: 44 FR 55813, Sept. 28, 1979, unless otherwise noted.

## Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

### § 219.1 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219, subpart A) is issued by the Board of Governors of the Federal Reserve System (the Board) under section 1115 of the Right to Financial Privacy Act (the Act) (12 U.S.C. 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority pursuant to the Act.

[60 FR 233, Jan. 3, 1995]

### § 219.2 Definitions.

For the purposes of this subpart, the following definitions shall apply:

*Customer* means any person or authorized representative of that person who uses any service of a financial institution, or for whom a financial institution acts or has acted as a fiduciary in relation to an account maintained in the person's name. Customer does not include corporations or partnerships comprised of more than five persons.

*Financial institution* means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

*Financial record* means an original or copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

*Government authority* means any agency or department of the United

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States, or any officer, employee or agent thereof.

*Person* means an individual or a partnership of five or fewer individuals.

[Reg. S, 61 FR 29640, June 12, 1996]

#### §219.3 Cost reimbursement.

(a) *Fees payable.* (1) Except as provided in §219.4 of this part, a government authority seeking access to financial records pertaining to a customer, by written request, through:

- (i) A court order;
- (ii) A subpoena issued pursuant to the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure; or
- (iii) Other agency administrative procedures, including administrative subpoenas, voluntary requests, or other process shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section.

(2) The reimbursement schedule for a financial institution is set forth in appendix A to this section. If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution and may be included in the reimbursement.

(b) *Search and processing costs.* (1) Reimbursement of search and processing costs shall cover the total amount of personnel time spent in locating, retrieving, reproducing, and preparing financial records for shipment. Search and processing costs shall not cover analysis of material or legal advice.

(2) If itemized separately, search and processing costs may include the actual cost of extracting electronically stored records, based on computer time and necessary supplies; however, personnel time for computer searches may be paid for at the rates set for computer support specialist, specified in appendix A to this section, but only when compliance with the request for information requires that the financial institution use programming or other higher level technical services of a computer support specialist in order to

reproduce electronically stored information in the format requested by the government authority.

(3) Rates for Search and Processing in appendix A shall be recalculated as follows on October 1, 2012, and on October 1 of each subsequent three-year period utilizing Bureau of Labor Statistics (“BLS”) data or equivalent data (as so designated by the Board) by replacing the existing hourly rates with the sum of:

(i) *Base labor rate recalculation*—Using the most recently available wage data from the Occupational Employment Statistics program (<http://www.bls.gov/oes/home.htm>) for the BLS industry category “Credit Intermediation and Related Activities” (NAICS Code Number 522000) (or successor category):

(A) [Clerical/Technical category] the average of the median hourly rates for the “Information and Records Clerk” and “Computer Operator” job categories (SOC Code Number 43–4199 and 43–9011) (or any successor job categories);

(B) [Manager/Supervisor category] the median hourly rate for the “first-line supervisors/managers of office” job category (SOC Code Number 43–1011) (or successor category), and

(C) [Computer Support Specialist category] the median hourly rate for the “computer support specialist” job category (SOC Code Number 15–1041) (or successor category); plus

(ii) *Benefits Adjustment*—an amount for each hourly rate category that is equal to the product of:

(A) The hourly rates set forth in paragraph (b)(3)(i) of this section, and

(B) The most recently available “percent of total compensation” represented by “total benefits” for the “Credit Intermediation and Related Activities” industry category (private sector) set out in the Employment Cost Trends section of the National Compensation Survey (<http://data.bls.gov/PDQ/outside.jsp?survey=cm>); and

(iii) If the recalculated rates for Search and Processing (including the Base labor rate and the benefits adjustment) are not a multiple of \$1, the recalculated rates shall be rounded up to the next multiple of \$1.

(c) *Reproduction costs.* The reimbursement rates for reproduction costs for